

REMARKS/ARGUMENTS

Applicant hereby requests that finality of the rejection be withdrawn.

Claim Rejections – 35 USC §102 (with 103 in the alternative)

The Office Action rejected claims 1-5, 9-12, 21–25 and 35-38, and 41- 43 under 35 USC §102(a & e) as being anticipated by, or in the alternative, under 35 USC 103(a) as being obvious over Mahan.

The filing date of the Mahan reference is Aug. 9th 2001. The Mahan reference is a CIP of other applications, and there is no indication that the earlier applications disclose the subject matter that is claimed in the current application.. However, as evidenced by the attached §1.131 declaration, the subject matter of all claims was conceived of prior to July 27, 1999, which precedes the filing date of Mahan. As the declaration points, out, laboratory entries from prior to the effective date of Mahan have been enclosed that show proof of conception, and that conception was coupled with diligence from prior to the effective date of Mahan to the filing of the provisional application to which the current application claims priority. As Applicant is able to swear behind Mahan, Applicant respectfully requests that Mahan be removed as a reference.

The Office Action also asserts as a basis for the rejection that “one of ordinary skill in the art would be aware of the presence of the *dam* gene in *P. multocida*” (Page 4, line 5). Applicant respectfully offers as objective evidence the attached §1.132 Declaration to rebut any *prima facie* case of obviousness that may be made on this assumption. This declaration shows several bacterial species, including pathogenic gram-negative bacteria, which do not have the *dam* gene

within their genome. Because there are so many bacteria that do not have the gene, including some within the same family, it would not be obvious that *P. multocida* would have a *dam* gene. As such, applicant respectfully requests that the rejection be withdrawn.

CONCLUSION

In view of the above, it is submitted that the claims and application are in condition for allowance. Reconsideration of the rejections and objections is requested. Allowance of the claims at an early date is solicited. Should the Examiner have any suggestions to place the application in even better condition for allowance or feel that issues may be best resolved by personal or telephonic interview, Applicant invites the Examiner to contact the undersigned representative at the number below.

Respectfully Submitted,
Butler, Snow, O'Mara, Stevens & Cannada, PLLC

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